



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live

Frank O'Bannon
Governor

Lori F. Kaplan
Commissioner

100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015
(317) 232-8603
(800) 451-6027
www.state.in.us/idem

November 12, 2002

U.S. Environmental Protection Agency
Mailcode 6102
1200 Pennsylvania Avenue NW.
Washington, DC 20460

RE: Docket No. A-2000-47

Thank you for the opportunity to comment on the Proposed Rulemaking for the National Performance Track Program and its participating facilities. Indiana, specifically the Indiana Department of Environmental Management (IDEM), has worked with EPA since the initial stages of Performance Track through a grant and participation in conference calls. Currently, Indiana has 11 facilities in the Performance Track program.

In addition, IDEM has worked with EPA on pilot programs for Environmental Management Systems (EMS) since 1997. Based on our previous work, IDEM has seen many benefits to companies and the environment when a facility implements and maintains a comprehensive EMS. The idea of providing regulatory benefits to companies that have an EMS and go above and beyond environmental requirements is a good one. Determining what regulatory benefits are practicable and reasonable is the biggest challenge. The proposed rulemaking posted in the August 13, 2002 Federal Register is a good start. Enclosed are comments from IDEM regarding the proposed rulemaking (FR Vol. 67, No. 156 August 13, 2002 Pages 52674 – 52696):

Sincerely,

Jim Mahern, Assistant Commissioner
Office of Pollution Prevention and Technical Assistance

Enclosure

The proposed rulemaking will effect a number of programs including CAA, CWA, RCRA, and EPCRA. The following comments address concerns of the National Performance Track Program effects on CAA and Indiana's air programs.

Section II Proposed Rulemaking Changes

1. EPA is proposing to reduce the reporting frequency contained in the MACT standards for those sources that are accepted into the National Performance Track Program. IDEM incorporates most NESHAPs and MACT standards by reference and most Indiana rules would not be effected. However, there are a few NESHAPS and MACT standards where the state is more stringent than the federal standards. In those few cases, the Performance Track program may effect the reporting requirements under the state rules. Sources would not be eligible for a reduction in reporting frequency for the state rules unless those state rules are revised.
2. The Performance Track Program in reducing the reporting frequency will also affect many permits that contain quarterly or monthly reporting. Additionally, some MACTS require additional reporting when deviations are identified. Many permits would need to be modified to change the frequency of reporting under the MACT requirements contained in the permits.
 - ◆ The proposed rule recognizes that reports for major sources must still be submitted at least semi-annually to meet Title V permitting requirements. IDEM has determined that most reports must be submitted quarterly. IDEM is currently evaluating the frequency of various reporting requirements under the Title V permits, however there are a number of reports that will still need to be submitted more frequently than semi-annually.
 - ◆ Another issue is how to draft language that would be used in the NESHAPs, MACTS, and permits that would allow for companies going in and out of the Performance Track Program. The hope would be that the companies would remain in the Performance Track Program. But in reality, companies would fall in and out of the program at any given time. Experience shows that they would likely bounce in and out of the program based on deviations or violations at any given point in time. If a company that were in the Performance Track Program suddenly had some stack test emission violations, would they no longer be eligible for the Performance Track program and therefore, need to go back to their original reporting frequencies? The rules and permits would need to be flexible enough to account for the various levels of reporting frequencies.
3. As mentioned above, it is hoped that companies would remain in the Performance Track program, but as companies come in or fall out of the program, it will be difficult to track reporting frequency changes. It will make it difficult for the companies and IDEM in trying to keep track of the appropriate reporting frequency at any given point in time.
4. How would companies be taken off the Performance Track Program once violations are discovered? Does EPA have a list of violations that would automatically remove a company from the program? Companies should not reap the benefits of the program once violations are discovered that will lead to them being removed from the program. A good example would be IDEM identifying violations and recommending the company be removed from the Performance Track Program, yet the company continues to use the benefits like reduced reporting frequency until they are removed from the program. How quickly can a facility be removed from the program, therefore, preventing the company from advertising itself as a Performance Track Program leader even after the violations have been identified and a recommendation to be removed

has been made.

5. IDEM has primary responsibility to write permits and conduct compliance evaluations as base programs under the various federal requirements. The relief companies would get under Performance Track Program are primarily geared toward base program activities. The burden of this program is on the base program run by the states. There would be little burden on EPA that would affect permitting or compliance activities.

Section III Other Potential Incentives: Consolidated Reporting

1. The Performance Track Program is looking to pilot a program for consolidated reporting. This would be a valuable program to reduce the number of reports sent to the agency. However, a certain amount of caution should be taken to make sure EPA and the state's ability to determine compliance is not compromised. The trend under the CAA has been toward self-monitoring and self-reporting including reporting violations. Both EPA and IDEM have limited resources to spend time inspecting sources and to accomplish the need to determine compliance on-site. One tool in determining compliance is self-reporting by companies. Under the Performance Track, EPA and IDEM's ability to ascertain compliance is reduced. Another consideration is the amount of self-reported violations is significantly less than those discovered by the agency.
2. The Performance Track Program is probably a good avenue to explore and pilot a consolidated reporting project. However, the complications of modifying federal and state rules and source permits may be too big of burden to overcome before addressing consolidated reporting.

Section IV Summary of Environmental, Energy, and Economic Impacts

1. IDEM would concur that there would be long term cost reduction on the companies' part, EPA, and IDEM with a reduction in reporting frequency. However, there will be hidden costs in the need to modify rules and permits to account for the program. Additionally, IDEM would urge that reductions in reporting frequency not curtail the ability to effectively evaluate compliance.
2. The idea of submitting a simplified annual report rather than multiple periodic reports may not allow the agency to identify noncompliance in a timely manner. This would prevent both EPA and IDEM from taking timely and in some cases appropriate enforcement actions. If a company identified deviations or violations early in the year, it would be almost another year before the company would be required to identify the violations to the IDEM in an annual compliance certification.

Part 63-[AMEMDED]

1. EPA is proposing to allow sources that are required use add-on control technology to meet their periodic reporting elements through an annual certification. This section needs to be clarified to address add-on controls for MACT standards only. Much of the air pollution controls used by industry are considered add-on controls that are subject to various rules. Even if the provision is limited to MACT standards, the annual compliance certification is not sufficient to determine compliance in a timely manner. Additionally, the standard does not require anything more than the company to certify that they used add-on controls. It is implied, but there is nothing in the requirement that the company properly operate and maintain the add-on controls. As with most Title V sources and with Indiana's Federal Enforceable State Operating Permitted

sources, compliance monitoring is necessary for sources to certify compliance. There is no provision for monitoring in the proposal.

EPA did not address the reduction in inspection frequency by the agency or states in this rule making. The inspection frequency is covered by EPA policy. States are required under the Compliance Monitoring Strategy and the state's EnPPA with EPA to inspect sources on a particular frequency. The modification to the Compliance Monitoring Strategy and state's EnPPA has not been addressed.